

## Chapter 237

### TRANSIENT MERCHANTS

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[HISTORY: Adopted by the Common Council of the City of Franklin 8-5-1997 by Ord. No. 97-1461 as Sec. 13.06 of the 1997 Code. Amendments noted where applicable.]

#### GENERAL REFERENCES

Licenses and permits — See Ch. 169.

St. Martins Fair — See Ch. 203.

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#### § 237-1. License required.

It shall be unlawful for any transient merchant to engage in sales within the city without being registered for that purpose as provided herein.

#### § 237-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CHARITABLE ORGANIZATION — Includes any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such.

CLERK — The City Clerk.

MERCHANDISE — Includes personal property of any kind, and shall include merchandise, goods or materials provided incidental to services offered or sold. The sale of merchandise includes donations required by the seller for the retention of goods by a donor or prospective customer.

PERMANENT MERCHANT — Any person who, for at least one year prior to the consideration of the application of this chapter to said merchant, has continuously operated an established place of business in the local trade area among the communities bordering the place of sale; or has continuously resided in the local trade area among the communities bordering the place of sale and now does business from his or her residence.

**SERVICES** — Any activity offered for sale or sold to a prospective customer. The sale of services includes donations required by the seller from a donor or prospective customer in order to receive the offered services.

**TRANSIENT MERCHANT** — Any person who engages in the retail sale of merchandise or services at any place in this state temporarily and who does not intend to become and does not become a permanent merchant of such place. For purposes of this chapter, “person” means corporation, partnership, association, organization, individual, principal, agent or employee, alone or collectively as the case may be, with liability for compliance with the terms of this chapter being joint and several and imputed between any agent or employee and his or her principal or employer, though any exemption specified under § 237-3 below must be met in its terms by each individual or organization claiming the same, regardless of their acting in concert. For purposes of this chapter, “sale of merchandise” includes a sale in which the personal services rendered upon or in connection with the merchandise constitutes the greatest part of value for the price received, but does not include a farm auction sale conducted by or for a resident farmer of personal property used on the farm or the sale of produce or other perishable products at retail or wholesale by a resident of this state.

### § 237-3. Exemptions.

A. The following shall be exempt from all provisions of this chapter:

- (1) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
- (2) Any person selling merchandise at wholesale to dealers in such merchandise.
- (3) Any person selling agricultural products which the person has grown or livestock or fowl which the person has raised.
- (4) Any permanent merchant or employee thereof who takes orders at the home of the buyer for merchandise or services regularly offered for sale by such merchant within this county and who delivers such merchandise or services in his or her regular course of business.
- (5) Any person who has an established place of business where the merchandise or services being sold are offered for sale on a regular basis and in which the buyer has initiated contact with, and specifically requested, a home visit by said person.
- (6) Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer.
- (7) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
- (8) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided that there is submitted to the Clerk proof that such charitable organization is registered under § 440.42, Wis. Stats. Any charitable organization engaging in the sale of merchandise or services and not

registered under § 440.42, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this chapter.<sup>1</sup>

- (9) Any person who claims to be a permanent merchant, but against whom complaint has been made to the Clerk that such person is a transient merchant, provided that there is submitted to the Clerk proof that such person has leased for at least one year or purchased the premises from which he or she has conducted business in the market area for at least one year prior to the date the complaint was made.
  - (10) Any individual licensed by an examining board as defined in § 15.01(7), Wis. Stats.
  - (11) Any ex-soldier of the United States holding a license under § 440.51, Wis. Stats. who shall, while engaged in the business as such merchant or peddler, carry the special license and proof required for the issuance of such special license under such chapter.
  - (12) Trick-or-treaters on approved days for Halloween.
- B. Notwithstanding anything to the contrary set forth in this section, those persons specified as exempt from the terms of this chapter under Subsection A(3), (9) and (11) and who intend to engage in door-to-door sales of merchandise or services, and any person not otherwise subject to the terms of this chapter intending to engage in door-to-door solicitation of money or anything of monetary value, shall nonetheless be required in advance of such activity to provide to the Clerk some reasonable form of identification and two identical passport-sized photographs of such person and to obtain, without fee, and display on their person the merchant's identification tag required under § 237-7 below at all times while engaged in such door-to-door sales or solicitation. This subsection does not apply to resident minor children conducting door-to-door sales or solicitations on behalf of a charitable organization, including but not limited to the Boy Scouts of America, Girl Scouts of America, public and private schools and youth athletic leagues and associations.

#### § 237-4. Registration.

##### A. Applications.

- (1) Applicants for registration and license must complete and return to the Clerk a registration form furnished by the Clerk, which shall require the following information:
  - (a) Name, date of birth, permanent address and telephone number and temporary address, if any.
  - (b) Age, height, weight and color of hair and eyes.
  - (c) Name, address and telephone number of the person, firm, association or corporation that the transient merchant represents or is employed by or by whose merchandise or services are being sold.
  - (d) Temporary address and telephone number from which business will be conducted, if any.

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<sup>1</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (e) Nature of the business to be conducted and a brief description of the merchandise and any services offered.
- (f) Proposed methods of delivery of merchandise or services, if applicable.
- (g) Make, model and license number of any vehicle to be used by the applicant in the conduct of his or her business.
- (h) Most recent cities, villages and towns, not to exceed three, where the applicant conducted his or her business.
- (i) Place where the applicant can be contacted for at least seven days after leaving this city.
- (j) Statement as to whether the applicant has been convicted of any crime or ordinance violation related to the applicant's transient merchant business within the last five years, and the nature of the offense and the place of conviction.
- (k) All places of residence for the applicant for the previous two years.

(2) All applications shall be signed and sworn to by the applicant.

B. Applicants shall present to the Clerk for examination:

- (1) In the case of door-to-door sales, a driver's license or some other proof of identity as may be reasonably required and two identical passport-sized photographs of the applicant.
- (2) A State Health Officer's certificate where the applicant's business involves the handling of food or clothing and is required to be certified under state law, such certificate to be valid and in effect, and to state that the applicant is apparently free from any contagious or infectious disease.

C. At the time the registration is returned, a registration license fee as set forth under Chapter 169, Licenses and Permits, shall be paid to the Clerk to cover the cost of processing said registration.

D. The applicant shall sign a statement appointing the Clerk or his or her agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, in the event that the applicant cannot, after reasonable effort, be served personally.

#### **§ 237-5. Investigation.**

- A. Upon receipt of each application, the Clerk may refer it immediately to the City Police Department and such other city departments whose duties are relevant to the application in the discretion of the Clerk, which departments may make and complete an investigation of the statements made in such registration.
- B. The Clerk shall refuse to register the application if it is determined, pursuant to the investigation above, that: the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the

applicant by authorities in the most recent cities, villages and towns, not exceeding three, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling; or the applicant failed to comply with any applicable provision of § 237-4B above.

**§ 237-6. Appeal.**

Any person refused or denied registration may appeal the denial through the appeal procedure provided under the provisions of §§ 69.07 through 68.16., Wis. Stats.

**§ 237-7. Registration license.**

- A. Upon filing the application properly filled out and in a proper case, a certificate as provided by this chapter, the Clerk shall issue a license. All licenses shall be numbered in the order in which they are issued and shall state clearly the place where the business may be carried on, the kind of goods, services or solicitation to be sold, disposed of or contracted for, the dates of issuance and expiration of licenses, the fee paid and the name of the licensee. Such licenses shall automatically expire on June 30 following the date of issuance of such license.
- B. No license shall be granted to a person under 18, and no applicant to whom a license has been refused or who has had a license which has been revoked shall make further application until a period of at least six months shall have elapsed since the last previous rejection or revocation, unless the applicant can show the reason for such rejection or revocation no longer exists.
- C. Every licensee, while exercising his or her license, shall post his or her license in a conspicuous place and shall exhibit the same upon demand of any officer, customer or prospective vendor. In addition, every licensee and each person specified in § 237-3B above shall display and wear on their outer garment in the upper left chest area a merchant's identification tag at all times while such licensee or person is selling or soliciting door-to-door. Such merchant's identification tag shall include one of the photographs provided by the licensee or person and shall specify the person's name, license or exemption number, date of expiration and shall otherwise be in a readily identifiable size, color and format as prescribed by the Clerk. The Clerk shall maintain the other photograph provided by the licensee or person on file.
- D. A license shall not be assignable, and any holder of a license who permits it to be used by any other person shall be guilty of a violation of this chapter. Whenever a license shall be lost or destroyed, a duplicate may be issued by the Clerk upon filing an affidavit setting forth the circumstances of the loss, what, if any, search has been made for its recovery and upon the payment of a fee as stated in Chapter 169, Licenses and Permits.

**§ 237-8. License fee.**

The license fee shall be paid to the City Treasurer upon making the application for a transient merchant's license and shall be as stated in Chapter 169, Licenses and Permits. In the case of door-to-door transient merchants, separate licenses and license fees are required for a principal transient merchant and each person acting as an employee or agent of such principal. A transient merchant license issued under this chapter shall entitle the licensee to sell as authorized in this chapter, except at the St. Martins Labor Day Fair. No transient merchant shall sell any merchandise or services at the St. Martins Labor Day Fair unless such merchant holds a valid transient merchant license and obtains a St. Martins Labor Day Fair license endorsement from the Clerk or designee upon payment of the license endorsement fee as set forth under Chapter 169, Licenses and Permits. If such license and/or endorsement is to be issued after the close of the Clerk's office and immediately prior to the St. Martins Labor Day Fair, an additional fee shall be charged as set forth under Chapter 169. Any person selling merchandise or services at the St. Martins Labor Day Fair shall also be subject to the regulations set forth under Chapter 203, St. Martins Fair.

**§ 237-9. Mutilation of license.**

On the expiration of the license, the licensee shall surrender the same to the City Clerk. No person shall alter or change any license issued under the provisions of this chapter.

**§ 237-10. Regulation of transient permits.****A. Prohibited practices.**

- (1) A transient merchant shall be prohibited from: calling at any dwelling or other place between the hours of 9:00 p.m. and 9:00 a.m. except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place; or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.
- (2) A transient merchant shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or characteristics of any merchandise or services offered for sale, the purpose of such merchant's visit, such merchant's identity or the identity of the organization such merchant represents. A charitable organization transient merchant shall specifically disclose what portion of the sale price of the merchandise or services being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the merchandise or services.
- (3) No transient merchant shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
- (4) No transient merchant shall make any loud noises or use any sound-amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one-hundred-foot radius of the source.

- (5) No transient merchant shall allow rubbish or litter to accumulate in or around the area in which such merchant is conducting business, and any foodstuffs offered for sale shall be kept well-covered and protected from dirt, dust, insects and rodents.

**B. Disclosure requirements.**

- (1) After the initial greeting and before any other statement is made to a prospective customer, a transient merchant shall expressly disclose such merchant's name, the name of the company or organization such merchant is affiliated with, if any, and the identity of merchandise or services such merchant offers to sell.
- (2) If any sale of merchandise or services is made by a transient merchant, or any offer for the later delivery of merchandise or services is taken by the seller, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than \$25, in accordance with the procedure as set forth in § 423.203, Wis. Stats.; the seller shall give the buyer two copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of § 423.203(1)(a),(b) and (c), (2) and (3), Wis. Stats.
- (3) If the transient merchant takes a sales order for the later delivery of merchandise or services, such merchant shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement; the amount paid in advance, whether full, partial or no advance payment is made; the name, address and telephone number of the seller; the delivery or performance date; and whether a guaranty or warranty is provided, and, if so, the terms thereof.

**§ 237-11. Records.**

The Chief or Police shall report to the Clerk all convictions for violations of this chapter, and the Clerk shall note any such violation on the record of the registrant convicted.

**§ 237-12. Revocation of registration.**

- A. Registration may be revoked by the License Committee, after notice and hearing, if the registrant made any material omission or materially inaccurate statements in the application for registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in transient sales, violated any provision of this chapter or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in selling.
- B. Written notice of the hearing shall be served personally or pursuant to Subsection A above on the registrant at least 72 hours prior to the time set for the hearing; such notice shall contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

**§ 237-13. Violations and penalties.**

Any person adjudged in violation of any provision shall be subject to the penalty provisions set forth under Chapter 1, General Provisions, § 1-19.